

SENATE, No. 2359

STATE OF NEW JERSEY
218th LEGISLATURE

INTRODUCED APRIL 5, 2018

Sponsored by:

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SYNOPSIS

Extends time period for municipalities to commit to expend collected development fees and payments-in-lieu of constructing affordable units.

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 10/25/2019)

1 AN ACT concerning affordable housing development fees and
2 payments-in-lieu of constructing affordable housing units and
3 amending P.L.1985, c.222 and P.L.2008, c.46.

4
5 **BE IT ENACTED** *by the Senate and General Assembly of the State*
6 *of New Jersey:*

7
8 1. Section 4 of P.L.1985, c.222 (C.52:27D-304) is amended to
9 read as follows:

10 4. As used in P.L.1985, c.222 (C.52:27D-301 et al.):

11 a. "Council" means the Council on Affordable Housing
12 established **[in P.L.1985, c.222 (C.52:27D-301 et al.)]** by section 5
13 of P.L.1985, c.222 (C.52:27D-305), or its successor, which shall
14 have primary jurisdiction for the administration of housing
15 obligations in accordance with sound regional planning
16 considerations in this State.

17 b. "Housing region" means a geographic area of not less than
18 two nor more than four contiguous, whole counties which exhibit
19 significant social, economic and income similarities, and which
20 constitute to the greatest extent practicable the primary metropolitan
21 statistical areas as last defined by the United States Census Bureau
22 prior to the effective date of P.L.1985, c.222 (C.52:27D-301 et al.).

23 c. "Low income housing" means housing affordable according
24 to federal Department of Housing and Urban Development or other
25 recognized standards for home ownership and rental costs and
26 occupied or reserved for occupancy by households with a gross
27 household income equal to 50 percent or less of the median gross
28 household income for households of the same size within the
29 housing region in which the housing is located.

30 d. "Moderate income housing" means housing affordable
31 according to federal Department of Housing and Urban
32 Development or other recognized standards for home ownership
33 and rental costs and occupied or reserved for occupancy by
34 households with a gross household income equal to more than 50%
35 but less than 80 percent of the median gross household income for
36 households of the same size within the housing region in which the
37 housing is located.

38 e. "Resolution of participation" means a resolution adopted by
39 a municipality in which the municipality chooses to prepare a fair
40 share plan and housing element in accordance with P.L.1985, c.222
41 (C.52:27D-301 et al.).

42 f. "Inclusionary development" means a residential housing
43 development in which a substantial percentage of the housing units
44 are provided for a reasonable income range of low and moderate
45 income households.

EXPLANATION – Matter enclosed in bold-faced brackets **[thus]** in the above bill is
not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

1 g. "Conversion" means the conversion of existing commercial,
2 industrial, or residential structures for low and moderate income
3 housing purposes where a substantial percentage of the housing
4 units are provided for a reasonable income range of low and
5 moderate income households.

6 h. "Development" means any development for which
7 permission may be required pursuant to the "Municipal Land Use
8 Law," P.L.1975, c.291 (C.40:55D-1 et seq.).

9 i. "Agency" means the New Jersey Housing and Mortgage
10 Finance Agency established by P.L.1983, c.530 (C.55:14K-1 et
11 seq.).

12 j. "Prospective need" means a projection of housing needs
13 based on development and growth which is reasonably likely to
14 occur in a region or a municipality, as the case may be, as a result
15 of actual determination of public and private entities. In
16 determining prospective need, consideration shall be given to
17 approvals of development applications, real property transfers, and
18 economic projections prepared by the State Planning Commission
19 established by sections 1 through 12 of P.L.1985, c.398 (C.52:18A-
20 196 et seq.).

21 k. "Person with a disability" means a person with a physical
22 disability, infirmity, malformation, or disfigurement which is
23 caused by bodily injury, birth defect, aging, or illness including
24 epilepsy and other seizure disorders, and which shall include, but
25 not be limited to, any degree of paralysis, amputation, lack of
26 physical coordination, blindness or visual impairment, deafness or
27 hearing impairment, the inability to speak or a speech impairment,
28 or physical reliance on a service animal, wheelchair, or other
29 remedial appliance or device.

30 l. "Adaptable" means constructed in compliance with the
31 technical design standards of the barrier free subcode adopted by
32 the Commissioner of Community Affairs pursuant to the "State
33 Uniform Construction Code Act," P.L.1975, c.217 (C.52:27D-119
34 et seq.) and in accordance with the provisions of section 5 of
35 P.L.2005, c.350 (C.52:27D-123.15).

36 m. "Very low income housing" means housing affordable
37 according to federal Department of Housing and Urban
38 Development or other recognized standards for home ownership
39 and rental costs and occupied or reserved for occupancy by
40 households with a gross household income equal to 30 percent or
41 less of the median gross household income for households of the
42 same size within the housing region in which the housing is located.
43 (cf: P.L.2017, c.131, s.199)

44

45 2. Section 8 of P.L.2008, c.46 (C.52:27D-329.2) is amended to
46 read as follows:

47 8. a. The council may authorize a municipality that has
48 petitioned for substantive certification, or that has been so

1 authorized by a court of competent jurisdiction, and which has
2 adopted a municipal development fee ordinance to impose and
3 collect development fees from developers of residential property, in
4 accordance with rules promulgated by the council. Each amount
5 collected shall be deposited and shall be accounted for separately,
6 by payer and date of deposit.

7 A municipality may not spend or commit to spend any affordable
8 housing development fees, including Statewide non-residential fees
9 collected and deposited into the municipal affordable housing trust
10 fund, without first obtaining the council's approval of the
11 expenditure. The council shall promulgate regulations regarding
12 the establishment, administration and enforcement of the
13 expenditure of affordable housing development fees by
14 municipalities. The council shall have exclusive jurisdiction
15 regarding the enforcement of these regulations, provided that any
16 municipality which is not in compliance with the regulations
17 adopted by the council may be subject to forfeiture of any or all
18 funds remaining within its municipal trust fund. Any funds so
19 forfeited shall be deposited into the "New Jersey Affordable
20 Housing Trust Fund" established pursuant to section 20 of
21 P.L.1985, c.222 (C.52:27D-320).

22 b. A municipality shall deposit all fees collected, whether or
23 not such collections were derived from fees imposed upon non-
24 residential or residential construction into a trust fund dedicated to
25 those purposes as required under this section, and such additional
26 purposes as may be approved by the council.

27 c. (1) A municipality may only spend development fees for an
28 activity approved by the council to address the municipal fair share
29 obligation.

30 (2) Municipal development trust funds shall not be expended to
31 reimburse municipalities for activities which occurred prior to the
32 authorization of a municipality to collect development fees.

33 (3) A municipality shall set aside a portion of its development
34 fee trust fund for the purpose of providing affordability assistance
35 to low and moderate income households in affordable units
36 included in a municipal fair share plan, in accordance with rules of
37 the council.

38 (a) Affordability assistance programs may include down
39 payment assistance, security deposit assistance, low interest loans,
40 common maintenance expenses for units located in condominiums,
41 rental assistance, and any other program authorized by the council.

42 (b) Affordability assistance to households earning 30 percent or
43 less of median income may include buying down the cost of low
44 income units in a municipal fair share plan to make them affordable
45 to households earning 30 percent or less of median income. The use
46 of development fees in this manner shall not entitle a municipality
47 to bonus credits except as may be provided by the rules of the
48 council.

1 (4) A municipality may contract with a private or public entity
2 to administer any part of its housing element and fair share plan,
3 including the requirement for affordability assistance, or any
4 program or activity for which the municipality expends
5 development fee proceeds, in accordance with rules of the council.

6 (5) Not more than 20 percent of the revenues collected from
7 development fees shall be expended on administration, in
8 accordance with rules of the council.

9 d. The council shall establish a time by which all development
10 fees collected within a calendar year shall be expended; provided,
11 however, that all fees shall be committed for expenditure within
12 **【four】** eight years from the date of collection. A municipality that
13 fails to commit to expend the balance required in the development
14 fee trust fund by the time set forth in this section shall be required
15 by the council to transfer the remaining unspent balance at the end
16 of the **【four-year】** eight-year period to the "New Jersey Affordable
17 Housing Trust Fund," established pursuant to section 20 of
18 P.L.1985, c.222 (C.52:27D-320), as amended by P.L.2008, c.46
19 (C.52:27D-329.1 et al.), to be used in the housing region of the
20 transferring municipality for the authorized purposes of that fund.

21 e. Notwithstanding any provision of this section, or regulations
22 of the council, a municipality shall not collect a development fee
23 from a developer whenever that developer is providing for the
24 construction of affordable units, either on-site or elsewhere within
25 the municipality.

26 This section shall not apply to the collection of a Statewide
27 development fee imposed upon non-residential development
28 pursuant to sections 32 through 38 of P.L.2008, c.46 (C.40:55D-8.1
29 et seq.) by the State Treasurer, when such collection is not
30 authorized to be retained by a municipality.

31 (cf: P.L.2008, c.46, s.8)

32

33 3. Section 9 of P.L.2008, c.46 (C.52:27D-329.3) is amended to
34 read as follows:

35 9. a. The council may authorize a municipality that has
36 petitioned for substantive certification to impose and collect
37 payments-in-lieu of constructing affordable units on site upon the
38 construction of residential development, which payments may be
39 imposed and collected as provided pursuant to the rules of the
40 council. Payment-in-lieu fees shall be deposited into a trust fund,
41 and accounted for separately from any other fees collected by a
42 municipality. Whenever a payment-in-lieu is charged by a
43 municipality pursuant to this subsection, a development fee
44 authorized pursuant to section 8 of P.L.2008, c.46 (C.52:27D-
45 329.2) shall not be charged in connection with the same
46 development.

47 b. A municipality shall commit to expend collections from
48 payments-in-lieu imposed pursuant to subsection a. of this section

1 within **four** eight years of the date of collection. The council may
2 extend this deadline if the municipality submits sufficient proof of
3 building or other permits, or other efforts concerning land
4 acquisition or project development. The council shall provide such
5 administrative assistance as may be required to aid in the
6 construction of affordable housing units. A municipality that fails
7 to commit to expend the amounts collected pursuant to this section
8 within the timeframes established shall be required to transfer any
9 unexpended revenue collected pursuant to subsection a. of this
10 section to the "New Jersey Affordable Housing Trust Fund,"
11 established pursuant to section 20 of P.L.1985, c.222 (C.52:27D-
12 320), to be used within the same housing region for the authorized
13 purposes of that fund, in accordance with regulations promulgated
14 by the council.

15 (cf: P.L.2008, c.46, s.9)

16
17 4. This act shall take effect immediately.
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19

20 STATEMENT

21
22 This bill extends the time period in which a municipality must
23 commit to expend collected development fees and payments-in-lieu
24 of constructing affordable units held in a municipal trust fund, from
25 four years after the date of collection to eight years after the date of
26 collection.

27 Under current law, a municipality that fails to commit to expend
28 the balance required in the municipal trust fund within four years is
29 required to transfer the remaining unspent balance at the end of the
30 four-year period to the "New Jersey Affordable Housing Trust
31 Fund" to be used in the housing region of the transferring
32 municipality for the authorized purposes of that fund.